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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Development of Distribution Resources Plans Pursuant to Public Utilities Code Section 769.	Rulemaking 14-08-013 (Filed August 14, 2014)
And Related Matters.	Application No. 15-07-002 Application No. 15-07-003 Application No. 15-07-006
(NOT CONSOLIDATED)	
In the Matter of the Application of PacifiCorp (U901E) Setting Forth its Distribution Resource Plan Pursuant to Public Utilities Code Section 769.	Application 15-07-005 (Filed July 1, 2015)
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**COMMENTS OF THE COALITION OF CALIFORNIA
UTILITY EMPLOYEES ON THE ASSIGNED COMMISSIONER'S
RULING ON TRACK 3 ISSUES**

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Pursuant to the Assigned Commissioner's Ruling on Track 3 Issues and the ALJ's August 12, 2016 Email Ruling, the Coalition of California Utility Employees offers these comments on the Assigned Commissioner's Ruling.

**I. THE COMMISSION MUST EXAMINE THE THRESHOLD ISSUE OF
ALLOWING UNREGULATED THIRD PARTIES TO CONTROL
DISTRIBUTION RELIABILITY**

Like Commissioner Florio's April 4, 2016 Assigned Commissioner's Ruling Introducing a Draft Regulatory Incentives Proposal for Discussion and Comment, President Picker's Ruling on Track 3 Issues continues to fail to ask the threshold

question: Should the Commission put distribution reliability and safety in the hands of unregulated third parties who have no obligation to serve? Instead of carefully examining this question, the Commission simply assumes it should happen, thus ignoring the obvious danger of such a path.

Relying on unregulated third parties to keep the lights on is not new. California has done this before, with disastrous results. We recounted this history in our comments on Commissioner Florio's proposal. We recount it again here since the Commission has entirely failed to give this history even a passing thought, much less actually learn the obvious lessons.

In the mid-1990s, California decided that "the magic of the market"¹ would bring untold benefits if we deregulated the electric generation sector. All we had to do was force the utilities to divest much of their regulated generation fleet to unregulated third parties. This would foster so much competition among generators that electric supply prices would be driven down, resulting in customers seeing lower rates. CUE saw the folly of this thinking, warning that price spikes and blackouts were sure to result from unregulated generation markets.² Unfortunately, we were proven right. California suffered rolling blackouts and costs beyond anyone's imagination. Consumers lost more than \$40 billion. This was likely the most expensive public policy mistake in California history.

¹ President Fessler was fond of this rationale, reciting it *ad nauseum*.

² R.94-04-031/I.94-04-032; Comments of the Coalition of California Utility Employees on Competitive Premise, Regulator's Role and Marketplace Implications, First Round Comments, June 8, 1994, p. 19.

We recount this history not so we can say, “I told you so.” Rather, we recount it because the Commission’s current path – allowing unregulated third parties to control distribution reliability – threatens to release exactly the same disastrous behavior on the distribution system, with similar results for California customers.

A regulated utility providing distribution services will not intentionally fail to provide those services simply because another option is more profitable. An unregulated third party providing those services pursuant to a contract might do exactly that. One might ask why a contract between the unregulated third party DER provider and the utility would not be sufficient to ensure that the third party always provides the critical distribution service. Some would say, if they don’t provide the service, they won’t get paid. The problem is that the third party will have other economic incentives that may outweigh those in the contract.

For example, if the third party is a rooftop solar company also providing onsite storage, and it retains ownership of the solar generation and storage (this is the typical leasing model now very popular), that rooftop solar company will have its own economic incentives as the customer of the utility. Those incentives will be determined by the TOU tariff applicable to that site. That third party, which may have hundreds of these sites, would contract with the utility to provide services to the utility from the many storage systems it owns. It is easy to foresee that the value of the storage to the company as a utility customer may be greater by responding to the economic incentive from the tariff than from the contract. The

rooftop solar company will act in accordance with the greater economic incentive – and customers on that distribution circuit will be blacked out.

This is exactly the behavior we saw during the Energy Crisis when generators acted in their rational self interest by withholding their services from the day-ahead market because the day-of market was more lucrative. As more and more generators engaged in this rational behavior, prices in the market skyrocketed. Sometimes the generation services withheld were so large that blackouts resulted.

On the distribution system, the risk will be even greater than in generation. A single generator withholding supply would not create enough of a shortage to cause blackouts. It was only when many of them engaged in the same behavior that we saw both price spikes and blackouts (as CUE predicted). But on the distribution system, it is likely that on any particular distribution circuit the utility will rely on a single provider to, for example, provide enough energy from its storage to avoid a transformer overload on a hot summer afternoon. But when that storage is worth more if used to maximize return under the TOU tariff, that provider must be expected to withhold services called for by the contract and instead use that storage to maximize profits under the TOU tariff. Exactly that incentive could exist on a hot summer afternoon with critical peak pricing under the tariff making it highly lucrative to time discharge from the storage device according to that tariff rather than the contract. The result is an overloaded transformer that fails to operate, blacking out customers.

Of course, when that rooftop solar company sees in advance that its economic incentive to use the storage service onsite to avoid very high TOU rates on a hot summer afternoon is greater than its incentive to provide the storage service to the distribution grid, the company may decide that it should avoid forcing the blackout and “suggest” that the utility increase the compensation for providing the distribution service. Because the distribution utility will not have invested in the infrastructure to avoid the blackout and will instead be dependent on the unregulated third party, it must either pay up or black out customers.

This is exactly the behavior we saw during the Energy Crisis when generators continually demanded higher and higher prices to keep the lights on.

During the Energy Crisis, the generators’ behavior was stopped only when FERC regulated the previously unregulated market by issuing its “must offer” order. Yet this Commission has never examined the question of whether we should require those providing distribution services to be subject to its regulations.

Moreover, it will not take economically rational but anti-social behavior to cause blackouts. It just takes one of these fledgling companies to go bankrupt.³ A rooftop solar company, in an industry that by its own reckoning is highly volatile, may simply cease to function one day.⁴

³ E.g. <http://www.nytimes.com/2016/04/15/nyregion/bankruptcy-of-transcarestrains-new-yorks-emergency-services.html?login=email& r=1>.

⁴ SunEdison filed for bankruptcy April 21, 2016. Its failed merger with rooftop solar company Vivint was one of the reasons cited. <http://www.usatoday.com/story/money/2016/04/21/sunedison-chapter-11-bankruptcy/83329928/>.

It may also take just a large storm, wildfire or earthquake. The third party has no obligation to maintain a skilled workforce large enough to respond to the normal events California incurs, and may incur more frequently in the future. Without the ready workforce, extended blackouts would become the norm during and after emergencies.

As yet, the Commission has never examined the premise of allowing unregulated third parties with no obligation to serve to control whether the lights stay on or go out. Given California's epic disaster when it first implemented this idea, the Commission's failure to ask this question is inexplicable.

II. UTILITIES SHOULD CONSIDER SOME DERs IN DISTRIBUTION PLANNING

We want to clearly distinguish between the dangerous issue that the Commission should explicitly examine and the other related topics that are not at issue.

Utilities should consider the existence of DERs on a distribution circuit when evaluating the need for any upgrades. Whether the DERs are on the utility side of the meter or the customer side of the meter, if they exist or are planned, they must be part of the engineering analysis.

Utilities should consider DERs as an option to upgrade a distribution circuit. Whether the upgrade is a new transformer, new distributed generation, new storage or any other technology on the utility side of the meter, the utility should choose the most cost effective option it can implement and control.

Utilities ***should*** consider DER options on the customer side of the meter if and only if the utility controls the operation of the DER.

Utilities ***should not*** consider DERs whose operation is controlled by unregulated third parties in lieu of distribution circuit upgrades. Before any utility considers this or the Commission continues on the path to require this, the Commission must fully and openly evaluate the merits of such a path.

III. RESPONSES TO QUESTIONS IN THE RULING

Question 2 asks whether an additional sub-track should be established. Question 3 asks about the order in which the sub-tracks should be addressed. For the reasons articulated above, before any utility considers relying on a DER over which it does not have operational control or the Commission considers requiring a utility to consider such a DER, the Commission must fully and openly evaluate the merits of such a path.

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Respectfully submitted,

/s/

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